

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CASE NO. 04-34486 GFK

Steven G. Miller
SSN XXX-XX-2547
Peggy A. Miller
SSN XXX-XX-5905

CHAPTER 13 CASE

Debtor.

AMENDED NOTICE OF OBJECTION TO CONFIRMATION OF PLAN

TO: Debtor and other entities specified in Local Rule 3015-3.

1. Select Portfolio Servicing, Inc. f/k/a Fairbanks Capital Corporation (hereinafter "Secured Creditor") moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this objection at 10:30 a.m. on October 28, 2004, before the Honorable Gregory F. Kishel in Courtroom 228B at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any reply to this objection must be filed and delivered not later than 10:30 a.m. on October 27, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than October 25, 2004, which is three days before the time set for the hearing. **UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this objection pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed August 2, 2004. The case is now pending before this Court.

5. This objection arises under 11 U.S.C. § 1322 and Local Rule 3007-1.

6. Debtor is indebted to Secured Creditor in the principal amount of \$133,600.00, as evidenced by that certain Promissory Note dated August 7, 2001, together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain Mortgage Deed dated August 7, 2001, executed by Peggy Ann Miller and Steven Gerald Miller, Husband and Wife, recorded September 10, 2001, as Document No. 1651604, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A".

8. Said plan is objected to on the basis that it is not feasible and that Debtor will not be able to make all payments under the plan and to comply with the plan as contemplated by 11 U.S.C. § 1325 (a)(6).

9. Said plan is also objected to on the basis that Debtor is delinquent in their pre-petition monthly mortgage payments to Secured Creditor for the months of March, 2004 through August, 2004, in the total amount of \$8,326.49, including late charges and that said delinquency existing in Debtor's mortgage loan cannot be cured within a reasonable time as required by 11 U.S.C. § 1322(b)(5). In In re Newton, 161 B.R. 207 (Bkrtcy.D.Minn. 1993), this Court reaffirmed its previous finding that more than 12 months is ordinarily not a reasonable time to cure a default in pre-petition homestead mortgage payments under 11 U.S.C. § 1322(b)(5). The plan, as proposed by Debtor, would require approximately 24 months to complete based on the Proof of Claim filed by Secured Creditor. Therefore, the plan does not comply with the provision of Chapter 13 of the Bankruptcy Code, as contemplated by 11 U.S.C. § 1325(a)(1).

10. The value of the property as scheduled by Debtor is \$180,000.00 subject to Secured Creditor's mortgage in excess of \$138,383.98. The property is also subject to another Secured Creditor's mortgage in favor of CitiFinancial Mortgage Company in excess of \$15,000.00 as scheduled by Debtor.

11. The plan, as proposed, is not made in good faith by Debtor.

. . .

12. Therefore, it is requested that the Court deny confirmation of Debtor's plan.

Dated this 5th day of October, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, Minnesota 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO
COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT
PURPOSE.

Jun. 29. 2004 9:08AM UNIVERSAL TITLE

No. 3018 P. 17/22

110510034

Register of Titles, Ramsey, MN
 Date Filed: 9/10/01 4:00 PM
 An Doc #: 1651003
 On CT #: 001
 376026

NEED RECORDED MAIL TO:

Aares Funding Corporation
 350 South Grand Avenue
 Los Angeles, CA 90071
 Attn: Collateral Control
 NATIONAL ESTATE INFORMATION SERVICES
 100 EAST 7TH STREET, STE 4
 MINNEAPOLIS, MN 55405

Please Attach This Slip For Recording Detail

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on August 7, 2001
 The mortgagor is Peggy Ann Miller and Steven Gerald Miller, Husband and Wife.

("Borrower"). This Security Instrument is given to Aares Funding Corporation DBA Aares Home Loan

which is organized and existing under the laws of The State of California, and whose
 address is 350 South Grand Avenue, 4th Floor, Los Angeles, CA 90071
 ("Lender"). Borrower owes to Lender the principal sum of
 One Hundred Thirty Three Thousand nine hundred Dollars & No/cent.

This debt is evidenced by Borrower's note dated the same day as this Security Instrument ("Note"), which
 provides for monthly payments, with the full debt, if not paid earlier, due and payable on
 September 1, 2032

and for interest at the yearly rate of Eight and 7/8 thousandths
 percent. This Security Instrument secures to Lender: (a) the repayment of
 the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note (b) the
 payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security

MINNESOTA Single Family-PHSA/PHLAW UNIFORM INSTRUMENT

Form 8634 8/00
 Amended 8/01
 Form 8634 8/00
 Amended 8/01
 Form 8634 8/00
 Amended 8/01
 Form 8634 8/00
 Amended 8/01



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EXHIBIT A

Jun 29, 2004 9:08AM UNIVERSAL TITLE

No.3018 P. 18/22

11:11:11

instrument and, (c) the performance of Borrower's covenants and obligations under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in

Shawnee County, Missouri.

TRACT "D", REGISTERED LAND SURVEY NO. 21, ON FILE IN THE OFFICE OF THE
REGISTERAR OF TITLES WITHIN AND FOR SAID COUNTY, SHAWNEE COUNTY, MISSOURI

which has the address of 1649 Upper Afton Rd., Saint Louis
Missouri 63106

(Street, City)

(Zip Code) ("Property Address")

TOGETHER WITH all the improvements now or hereafter created on the property, and all covenants, appurtenances, and claims now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT embodies uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest, Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may claim priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rent on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 3, in lieu of the payment of mortgage insurance premiums. These sums are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a smaller amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of the Borrower's Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentally, or solely (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may request Borrower to pay a one-time charge for an

UNIVERSAL TITLE

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Form 3034 2/04

Doc 3034-001 2004 06/29/04

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Steven G. Miller
SSN XXX-XX-2547
Peggy A. Miller
SSN XXX-XX-5905

CASE NO. 04-34486 GFK

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on October 5, 2004, I served the annexed Amended Notice of Objection to Confirmation of Plan and proposed Order Denying Confirmation of Plan to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Steven G. Miller
Peggy A. Miller
1649 Upper Afton Road
St. Paul, MN 55106

Jasmine Z. Keller
12 South 6th Street, Suite 310
Minneapolis, MN 55402

Robert J. Everhart
PO Box 120534
New Brighton, MN 55112

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 5th day of October, 2004.

/e/ Diana Waletzko
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

**ORDER DENYING CONFIRMATION
OF PLAN**

Steven G. Miller
SSN XXX-XX-2547
Peggy A. Miller
SSN XXX-XX-5905

Debtor.

CASE NO. 04-34486 GFK

This Chapter 13 Case came on before the Court on October 28, 2004, for hearing on Debtor's plan of debt adjustment. Appearances were as noted in the record. Upon the record made at hearing, and all other files and records in this case,

IT IS HEREBY ORDERED that confirmation of Debtor's plan of debt adjustment, as filed August 2, 2004, is denied.

Dated: _____
Judge of Bankruptcy Court